

34 judgments of general interest

Caption: On the occasion of the 50th anniversary of the Court of Justice of the European Communities (CJEC), the Court's Press and Information Division includes among the material made available to the press a list of '34 judgments of general interest' that have greatly influenced its case-law.

Source: Press and Information Division. 50 years of the Court of Justice of the EC 1952-2002, 34 judgments of general interest. Luxembourg: Court of Justice of the European Communities, December 2002.

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URL: http://www.cvce.eu/obj/34_judgments_of_general_interest-en-e14e47e9-bc38-42a1-ac0e-f47d713a4e20.html

Publication date: 23/10/2012

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The Court of justice and the life of European citizens

The Court of Justice plays an essential role in the institutional system set up by the Treaties.

In particular it is responsible for maintaining the balance, on the one hand, between the respective powers of the Community institutions and, on the other, between the powers transferred to the Community and those retained by the Member States. In exercising its powers of judicial review, the Court is often called upon to settle questions of a constitutional nature or of major economic significance.

In a judgment concerning road transport (the *ERTA* case, 1971), the Court held that the Member States no longer had the right to undertake obligations with third countries which affected the Community rules, thus establishing that the principle of the Community's powers in the field of external relations must be interpreted in line with changing circumstances.

Moreover, when the European Parliament acquired new powers, the Court recognized, before the Maastricht Treaty expressly so provided, that certain acts of the Parliament could be the subject of an action before the Court and, conversely, the Parliament could challenge acts of the other institutions if they compromised the institutional balance (*Chernobyl* judgment, 1990).

The Court has also contributed in decisive fashion to defining the European Community as a community governed by the rule of law by laying down two essential rules:

the *direct effect* of Community law in the Member States; and

the *primacy* of Community law over national law.

On the basis of those decisions, of which the *van Gend en Loos* (1963), *Costa v ENEL* (1964) and *Simmmenthal* (1978) judgments are the most important, the citizens of Europe may now rely on the provisions of the Treaties and Community regulations and directives in proceedings before their national courts, and may seek, for instance, to have a national law disapplied if it is contrary to Community law. On the basis of those two principles, the decisions of the Court of Justice have made Community law a reality for the citizens of Europe.

The Court has been asked to clarify Member States' obligations with regard to the **free movement of goods** and the establishment of a common market and to secure the removal of barriers protecting national markets and undertakings and, generally, of all hindrances to trade between Member States. Thus, following the *Cassis de Dijon* judgment (1979), European consumers may buy in their own country any food product from a country in the Community — provided that it is lawfully produced and marketed in that country and that there are no serious grounds related, for example, to the protection of health or the environment for preventing its importation into the country of consumption.

Subsequently the Court held in a case concerning *Ireland* (1982) that measures having no binding effect, such as a commercial campaign, adopted by a Member State could nevertheless influence the conduct of traders and consumers and were thus capable of frustrating the aims of the Treaty.

In a more recent case, the Court found against the *French Republic* (1997) for failing to take the measures necessary to prevent certain French farmers from obstructing the free passage over French territory of agricultural products from other Member States.

Moreover, in a case directly concerning the health of its citizens, the Court concluded that national rules which amounted to refusing to reimburse to an insured person the cost of spectacles on the ground that they

had been purchased in another Member State constituted an unjustified barrier to the free movement of goods (*Decker*, 1998).

As regards the **free movement of capital** and the abolition of restrictions in that connection, in the *Bordessa* judgment (1995) the Court held that citizens may export from one Member State to another coins, bank notes and cheques without having to obtain prior authorisation.

The Court has also fostered **freedom of movement for persons**, an essential factor not only in the establishment of the common market but also in an ever-closer union among the peoples of Europe.

A European *worker* who decides to settle in another Community country, and who may at times suffer direct or indirect discrimination, now enjoys the same rights and benefits as regards conditions of work and employment as those given to national workers.

In that connection, the Court has held that a social benefit guaranteeing minimum means of subsistence or a special old-age allowance guaranteeing a minimum income for old people are social advantages to which migrant workers are entitled under the same conditions as national workers.

The Court has also defined in a number of judgments the extent of the right of the *spouse* and *children* of a migrant worker to settle with him; in particular it has stressed that children must not only be admitted to courses of general education and occupational training, but are also entitled to the same assistance as the children of citizens of the State of residence, such as interest-free loans, scholarships, and assistance for the rehabilitation of the handicapped.

In that context, the conditions of access to *vocational training* also fall within the scope of the Treaty: in the *Gravier* judgment (1985), the Court held that a French student who wanted to study strip cartoon art in Belgium should not have to pay a higher enrolment fee than Belgian students.

More recently, in the *Bosman* judgment (1995), the Court ruled on the compatibility of football federation rules with the principle of freedom of movement for workers. Applying well-established case-law, it held that sport at professional level constitutes an economic activity, the exercise of which may not be limited either by rules on the transfer of players or — when inter-club matches are played — by limits on the number of players from other Member States.

The Court has also had to settle important issues in the fields of **freedom to provide services and freedom of establishment**.

Under the Treaty of Rome, all restrictions in those fields should have been abolished by the end of the 1960s, but the necessary steps had not always been taken within the prescribed period. In its judgments in the *van Binsbergen* and *Reyners* cases (1974), the Court swept away obstacles to the enjoyment of those freedoms by holding that the provisions of the Treaty had direct effect and could thus be relied upon in the national courts.

In a 1989 judgment, *Cowan*, a British tourist who was assaulted and seriously injured in the Paris metro was held to be entitled — as a recipient of services — to the same compensation as a French citizen could expect.

The Court has also had to give judgment on the general rules applicable to **freedom of competition**. Thus, for instance, the deregulation of air transport was facilitated by the *Nouvelles Frontières* case (1986), in which the Court held that the rules governing competition contained in the Treaties applied to air transport.

The Court of Justice has also had occasion to stress the importance of **environmental protection**, which it has held to be one of the essential objectives of the Community and, as such, capable of constituting grounds for certain restrictions on the principle of the free movement of goods. For example, the Court has accepted (in 1988) that it is lawful for Denmark to impose on distributors of beers and soft drinks an obligation to set

up a deposit-and-return system for empty containers, despite its effect on trade between States.

Finally, the important place given to *fundamental principles for the protection of individuals* in the case-law of the Court of Justice must be emphasized.

Ever since its judgments in the *Stauder* and *Internationale Handelsgesellschaft* cases (1969 and 1970 respectively), it has been one of the Court's constant concerns to protect the **fundamental rights of individuals**, and it has declared these to be general principles of law that the Court will apply within the framework of Community law.

Another problem examined by the Court in the context of numerous requests for preliminary rulings has been **equal pay for men and women**.

Since the Treaty of Rome contains a specific provision dealing with that question, in the **Defrenne** case (1976) the Court held that no Community or national measure was needed for the *direct application* of that provision, and that it was the duty of the national courts to ensure that all European citizens enjoyed the benefit of that principle.

The case-law of the Court in this area is prolific and has contributed to the equal treatment of women in the workplace. As regards interpretation of the principle of equality, in particular in the context of access to employment, the Court has recently given rulings in *Kalanke* (1995) and *Marschall* (1997). It has held that a national rule favouring women candidates over men is compatible with Community law if it provides for individual examination of each case so that the priority to be accorded to women may be set aside if reasons specific to an individual male candidate tilt the balance in his favour.

In its judgment in the *Francovich* case (1991), the Court of Justice laid down the **principle of State liability** for damage caused to individuals by breaches of Community law, giving rise to an obligation to make good such damage. By its judgment in *Brasserie du Pêcheur* and *Factortame* (1996), that principle was developed and extended to all cases of infringement and all State bodies responsible for the breach. The Court took the opportunity to set out the specific conditions governing State liability in order to ensure adequate compensation for damage caused and, consequently, effective protection of rights. Similarly, in *Hedley Lomas* (1996), the Court recognized that an exporter of live animals was entitled to reparation from the Government which had unlawfully impeded its trading activities.

Subsequently, in *Dillenkofer* (1996), which concerned a directive aimed at protecting tourists purchasing package travel, the Court held that failure to implement the directive in question constituted a serious breach of Community law sufficient to give rise to an obligation on the part of the State to compensate consumers who had suffered injury as a result.

Future prospects

The Europe of the Communities, born more than four decades ago, is now poised to enter into its period of maturity. Having become a frontier-free area in 1993, it is now moving towards political union following the adoption of Maastricht Treaty. Having welcomed the accession of Austria, Finland and Sweden in 1995, it is preparing to strengthen its bonds with new partners from Central and Eastern Europe.

What, then, is the shape of things to come for the Community's judicial body?

An increase in workload is to be expected, but so too is ever greater influence for the case-law which has built up over the four decades.

Whatever the future holds in store, the Court of Justice will continue to ensure that the law is observed in the interpretation and application of the Treaties, and its judgments will thus be respected by all who strive for a Europe of strength and solidarity in peace and unity.

Recent developments

In 1996 the European Commission adopted a decision in the field of the **free movement of goods** containing emergency measures against bovine spongiform encephalopathy (BSE), banning the export from the United Kingdom to other Member States and to third countries of all bovine animals and bovine meat and products obtained from bovine meat. The Court of Justice confirmed the validity of the emergency measures in 1998 (*National Farmers' Union and United Kingdom v Commission*). Also of special importance is the Court's decision, again in 1998, that international exhaustion of the rights conferred by a trade mark is not compatible with Community law (*Silhouette*).

In 2002 the Court's judgment on "golden share" in connection with the privatisation of undertakings was of exceptional importance for the **free movement of capital** (*Commission v Portugal, France and Belgium*).

In the field of the **freedom to provide services**, the Court ruled on the question of reimbursement of expenditure by sickness funds, in 1998 in the case of consultation of a doctor in another country (*Kohll*) and in 2001 in the case of hospital treatment in another country (*Geraets-Smits and Perbooms and Vanbraekel*).

On **citizenship of the Union**, first enshrined in the EC Treaty in 1993, the Court ruled for the first time in 1998 that every national of a Member State may rely on his citizenship of the Union for protection against discrimination on the ground of nationality by another Member State (*Martínez Sala*).

Finally, the EC Treaty has since 1993 provided for the possibility of ordering a **Member State** to pay a **penalty payment** or lump sum if it has **not complied with a judgment of the Court of Justice**. The Court imposed such a penalty for the first time in 2000 (*Commission v Greece*).